



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, (AFSCME),
COUNCIL 93, LOCAL 298

Complainant

v.

CITY OF MANCHESTER, NEW HAMPSHIRE

Respondent

CASE NO. A-0544:14

DECISION NO. 90-66

APPEARANCES

Representing AFSCME, Council 93:

Vincent Weners, Esq., Counsel
James C. Anderson, Staff Representative

Representing City of Manchester:

David Hodgen, Chief Negotiator
Carolyn Kirby, Esq.

Also appearing:

Richard Welch
Brian Mitchell
Gerald Rhinhart
Robert Lynch
Michael Paquette
Allan King, W.G.I.R.

BACKGROUND

On March 12, 1990 AFSCME, Council 93, Local 298 filed unfair labor charge against the City of Manchester alleging a violation of the ground rules adopted for the negotiation process, which identified the parties authorized to ratify an agreement and alleges that the mayor's veto of the Board of Mayor and Aldermen ratification of the agreement reached by the parties after a factfinder's report is a concerted effort to discriminate in the terms and conditions of employment and discourage membership in the employee organization, in violation of 273-A:5, I, (c) and (e).

The charge goes into detail regarding the history of the negotiation on ground rules, dates and times of actions prior to the advent of a newly elected mayor who vetoed the agreement reached by the parties. The union requested "an order to the city to cease and desist immediately and to honor the agreement ratified on March 6, 1990 by the Board of Mayor and Aldermen and take whatever action necessary to institute that package."

The City responded setting forth the chronology of the negotiation meetings beginning on June 7, 1988; adoption of ground rules; mediation; factfinding and the City's negotiating team's rejection of the factfinder's report and the Board of Mayor and Aldermen's rejection of the report; and the return to the bargaining table on December 13, 1989. On December 19, 1989 the Board of Mayor and Aldermen formally rejected a compromise and voted to reject the factfinder's report.

On January 2, 1990, the new Mayor and new Aldermen assumed office. AFSCME made a new proposal to the City's Chief Negotiator and on February 6, 1990, the Board of Mayor and Aldermen gave authority to the city's negotiator to proceed with AFSCME's new proposal without guarantee of ratification. Meetings were held on February 9, 22 and 23, 1990 and resulted in a tentative agreement which was ratified by AFSCME membership on March 1, 1990.

On March 6, 1990, the Board of Mayor and Aldermen acted upon ratification favorably (6 to 5 vote) with the Mayor stating he intended to veto the ratification.

Hearing in this matter was held on May 31, 1990 in the office of the PELRB in Concord, New Hampshire.

Evidence was presented by the parties on the procedures followed up to the presentation of the agreement reached by the parties to the Board of Mayor and Aldermen. Counsel for AFSCME offered evidence on the statute governing the city government; i.e., RSA 25:9, 46:9 and the City Charter at par: 2.01 and 2:02 and argued that the Mayor having sat with the Board of Mayor and Aldermen without a vote therefore had no right to veto the 6 to 5 ratification vote.

The City by its Chief Negotiator substantiated orally the process which had been followed--the vote taken on March 6th and the Mayor's veto of the action taken, that the vote of the Aldermen 6 to 5 in favor of the agreement, was subject to veto by the Mayor, such veto power granted to him by RSA 45:9 which reads as follows;

"Presiding; Veto. He shall preside in the board of aldermen and in convention of city councils, and shall be ex-officio chairman of the board of overseers of the public welfare. He shall have a negative upon the action of the aldermen in laying out highways, and in all other matters; but shall have no vote except in case of an equal division; and no vote can be passed or appointment made by the board of aldermen over his veto unless by a vote of two-thirds, at least, of all the aldermen elected."

and the City Charter, Article II, Section 2.01 (The governing body) and Section 2.02 "Composition of the Board of Aldermen."

The facts in this case are basically undisputed. The single issue presented to this Board is, can the Mayor veto the action taken in approving the contract by the Board of Mayor and Aldermen in its 6 to 5 vote of March 6, 1990?

FINDINGS OF FACT

PELRB makes the following findings which are substituted for the parties requests;

1. The statute constituting the Board of Mayor and Aldermen, (RSA 46:7 (One Board)) establishes the legislature body for the City.
2. The Mayor has the power to veto any matter which comes before the Board of Mayor and Aldermen and can only vote to break a tie, or in the event he wishes to veto legislation. (RSA 45:9 Presiding Veto) such veto can be overridden by 2/3 of all the elected aldermen.
3. The Mayor did in fact veto the 6 to 5 vote.
4. The Union's contention that ground rules for negotiations are binding on the Mayor and Aldermen and that there is no possibility of a veto because of that ground rule on the subject is not supported by the facts.
5. The ground rules adopted by the parties for negotiations cannot be interpreted to supercede the Mayor's authority of veto power nor tie, nor deny the Board of Mayor and Aldermen their right under the statute to participate in the process.
6. 273-A specifically sets forth the process to be followed in negotiation including the acceptance or rejection of, by the Aldermen body of any negotiated settlement.

ORDER

The parties are ordered to return to negotiations on the issues outstanding.

Signed this 2nd day of August, 1990.


EDWARD J. HASELTINE
Chairman

Chairman Edward J. Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting.